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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re D.B., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. D.B., Defendant and Appellant.	A155128 (Solano County Super. Ct. No. J42929)

D.B. (Minor), a ward of the court under Welfare and Institutions Code section 602, appeals from a juvenile court order approving his placement at Valley Teen Ranch in Fresno, about 190 miles from his mother's home in Dixon.[1] On appeal, Minor does not challenge the court's decision to place him out of his home; the sole question before us is whether substantial evidence justifies the court's placement of Minor at such a great distance from his family, outside Solano County. Finding no substantial evidence to support the distant placement, we reverse and remand with instructions that the juvenile court reconsider its placement decision, taking into consideration the pertinent statutory criteria regarding proximity to Minor's home.

[1] Unspecified statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

We take judicial notice of our two previous decisions from Minor's underlying case, *In re D.B.* (Apr. 26, 2018, A152018) [nonpub. opn.] (*D.B. I*) and *In re D.B.* (Dec. 10, 2018, A154499) [nonpub. opn.] (*D.B. II*). In *D.B. I*, we summarized Minor's delinquency history and affirmed disposition orders that, among other things, committed Minor to the Challenge Academy (Challenge) at juvenile hall. (*D.B. I* at p. 1.) After his release from Challenge, Minor admitted a probation violation, and at a contested disposition hearing the juvenile court issued orders continuing Minor's wardship, imposing gang-related probation conditions, and ordering "placement in suitable foster home or institution, if appropriate," contemplating placement in a group home.[2] (*D.B. II* at pp. 2-4.) On appeal from the disposition order, Minor challenged only the portion of the order imposing gang-related probation conditions, and we affirmed. (*Id.* at p. 1.)

Pending his placement, Minor remained in juvenile hall, where he had been detained, with review hearings scheduled every 15 days. Over the course of several weeks, the probation department reported that it had submitted referrals to two treatment programs, Valley Teen Ranch and Courage to Change; that Minor had interviewed with both programs; that Minor had been accepted at Valley Teen Ranch and plans were being made to transport him there; and finally that Minor had been released to placement and was currently at Valley Teen Ranch. Neither the probation department's reports nor the

[2] We take judicial notice of the Reporter's Transcript of the contested disposition hearing, which was part of the record in *D.B. II*. The probation department recommended Minor be placed in a group home, where he could receive intensive counseling services. The district attorney argued that Minor should be placed once again at Challenge, which would provide a secure environment and some counseling, even if the counseling was not as intensive as a group home would provide. Minor's counsel argued that Minor should be placed in his mother's home with electronic monitoring and be provided with counseling and family preservation services. The juvenile court noted that Minor had a supportive mother, but Minor did not consistently follow her rules after his release from Challenge. The court ordered placement at a group home, stating "The court was persuaded by the intensive individual counseling that would be available at a group home. I balance that with the lack of a record of true flight and runaway behavior."

reporter's transcripts of the hearings give the location of Valley Teen Ranch or Courage to Change.

At each of the review hearings, Minor was represented by counsel, who made no objections to either of the proposed placements. Minor timely appealed the juvenile court order approving his placement at Valley Teen Ranch.[3]

DISCUSSION

A. *Applicable Law*

We review a juvenile court's placement decision for abuse of discretion. (*In re Nicole H.* (2016) 244 Cal.App.4th 1150, 1154 (*Nicole H.*).) "We review the court's findings for substantial evidence, and ' "[a] trial court abuses its discretion when the factual findings critical to its decision find no support in the evidence." ' [Citation.]" (*Ibid.*) To determine whether substantial evidence supports the commitment, we examine the record in light of the purposes of the Juvenile Court Law. (*Ibid.*)

" 'Although public safety and the rehabilitation of the minor (presumed to serve the best interests of the delinquent minor) are the preeminent goals of the juvenile law relating to delinquent minors, it is also true that family reunification and the reintegration of the minor into his family are statutorily recognized to be important and complementary goals.' (*In re James R.* (2007) 153 Cal.App.4th 413, 434.) Thus, while section 727, subdivision (a), authorizes a juvenile court that adjudges a minor a ward of the court under section 602 to 'make any reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor . . . ,' section 727.1 specifies various criteria the court must consider in making an out-of-home placement, including proximity of the placement to the minor's parent's home."[4] (*Nicole H., supra,* 244 Cal.App.4th at

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[3] Minor's notice of appeal referred to his placement "in Madera County (at Valley Teen Ranch)." His briefs on appeal state that Valley Teen Ranch is in Fresno. We take judicial notice that Valley Teen Ranch is in Fresno, which is in Fresno County, and the distance between Fresno and Dixon, which is in Solano County and where D.B.'s mother lives, is about 190 miles. (*D.B. II,* at p. 2.)

[4] Section 727.1, subdivision (a), provides that placement is to be in the "most appropriate setting that meets the individual needs of the minor and is available, *in*

pp. 1155-1156.) In addition, section 740, subdivision (a)(1) provides that a minor who is adjudged to be ward of the court under section 602 and placed in community care facility shall be placed "within his or her county of residence, unless . . . [¶] . . . He or she has identifiable needs requiring specialized care that cannot be provided in a local facility or his or her needs dictate physical separation from his or her family." (See Welf. & Inst. Code, § 740, subd. (h)(1); Health & Saf. Code, § 1502, subd. (a)(13) [defining community care facilities to include group homes].)

In sum, "a minor's special needs and best interests may justify a distant placement," but the juvenile court must "consider the nearness of the placement to the minor's home, in order to achieve the goals of family reunification and rehabilitation." (*Nicole H., supra*, 244 Cal.App.4th at p. 1156.)

B. *Analysis*

The Attorney General contends the issue is forfeited because Minor had the opportunity to raise objections in the juvenile court to his placement at Valley Teen Ranch and failed to do so. As a general matter, a defendant's failure to object to discretionary sentencing matters will forfeit claims of error on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 352-353.) But because Minor's claim here involves an important issue of law, we exercise our discretion to consider it. (*In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7, citing *People v. Williams* (1998) 17 Cal.4th 148, 161-162; see also *Nicole H., supra*, 244 Cal.App.4th at p. 1158, fn. 10 [suggesting issue is sufficiently important to warrant consideration even if forfeited].)

Minor relies on *Nicole H.* to argue that in the absence of substantial evidence that there were no appropriate placements closer to his family, his placement at Valley Teen Ranch in Fresno was an abuse of discretion. There, the juvenile court placed the minor, a ward of the court under section 602, in a group home about 340 miles from her father's home. (*Nicole H., supra,* 244 Cal.App.4th at p. 1153.) Our colleagues in Division Five

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proximity to the parent's home, consistent with the selection of the environment best suited to meet the minor's special needs and best interests." (Italics added.)

concluded that removing appellant from her father's home was not an abuse of discretion, but reversed and remanded for reconsideration of the placement. The record was "devoid of any evidence or reasoning supporting a group home placement far from appellant's father's home," despite the statutory requirement that the juvenile court "consider the nearness of the placement to the minor's home, in order to achieve the goals of family reunification and rehabilitation." (*Id.* at pp. 1156-1157.)

Here, as the Attorney General concedes, the record does not show that the juvenile court was aware of the legislative preference for the placement of a ward in a group home close to his parent's home, or show why Minor was not placed in a group home in Solano County, or identify any needs of Minor that could not be provided by a facility closer to Dixon than Valley Teen Ranch in Fresno. True, the distance between Dixon and Valley Teen Ranch is less than the distance between the family home and the placement in *Nicole H.*, but just as in *Nicole H.*, the record before us includes no evidence or reasoning to support a placement at such a distance from Minor's home, and, like our colleagues, we conclude that the court's order here must be reversed and the matter remanded. This decision does not prevent the juvenile court from placing Minor at Valley Teen Ranch on remand if the record demonstrates the placement is in Minor's best interests under the pertinent statutory criteria regarding proximity to Minor's mother's home.

The Attorney General argues that we must presume the correctness of the juvenile court's order, and that in view of the general rule that the trial court is presumed to have been aware of and followed the applicable law, Minor cannot premise his claims of error on a silent record. We disagree. This is not a case where we simply lack evidence as to whether the trial court considered the nearness of the placement to minor's home. There is nothing in the record to suggest that the trial court was aware of the distance of the placement from Minor's home, and there is no substantial evidence in the record to support the juvenile court's implied finding that the placement at Valley Teen Ranch was in Minor's best interest in view of its distance from Minor's home, as required by section 727.1, or that Minor's needs required care that could not be provided in a local facility or that his needs dictated physical separation from his family, as required by section 740.

(See *Nicole H., supra,* 244 Cal.App.4th at p. 1159 [although there is no requirement that a juvenile court state on the record its reasons for rejecting less restrictive placements for a ward, there must be some evidence to support implied determination that the court considered and rejected reasonable alternatives, and substantial evidence to support implied finding that placement is in the ward's best interest].) In these circumstances, the lack of substantial evidence to support the juvenile court's implied findings overcomes the presumption of correctness.

DISPOSITION

The order approving Minor's placement at Valley Teen Ranch is reversed. The matter is remanded with instructions to the juvenile court to reconsider Minor's placement, taking into consideration the pertinent statutory criteria regarding proximity to Minor's mother's home.

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Miller, J.

We concur:

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Kline, P.J.

_____
Richman, J.

A155128, *People v. D.B.*